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LAW DAY 1998

CELEBRATING OUR FREEDOM BY ENSURING JUSTICE

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by **Hon. Calvin Botley**

The theme for this year's Law Day Celebration is "Celebrate Your Freedom: Ensuring Justice," an exhortation that no one can oppose, find criticism with, or even doubt the need for reelaboration at this time in our history. The events that took place during the past two decades of American history, however, require us to examine ourselves as lawyers, judges, law enforcement officials, educators, clergy, and citizens, and determine whether we have as professionals, a society, or a nation have given our best efforts to maintain our commitment to preserving the rule of law.

The founding principles of our nation were vested in the precepts of religious, economic, and self-governing freedoms. Yet, not every inhabitant has enjoyed the "spirit of freedom" as envisioned by the founding fathers. Although the founding fathers did not envision freedom for African slaves in 1776, (and how could they, when there were approximately 1,320 slaves lawfully owned and held as chattel by the eighteen signers of the Declaration of Independence); nonetheless, we must celebrate today the gains in freedom achieved through our system of laws and court decisions.

Today, our society suffers from a plethora of social ills and deficiencies, such as the acts of law breakers as young as eight years old; the massive overflow of drugs in our communities; children who cannot pass basic skills tests in high schools; a social services system overburdened

by the underadvantaged; children who have been abandoned by both their fathers and society; and the racially tense atmosphere existing in our grade schools, colleges and universities, and business environments. These are just a few of the ills that prevent the aims of justice from becoming a reality to many citizens and dim society's celebration of our liberty and freedom.

During my youth, as it is today, lawyers not only represented the accused, gave advice and represented individuals in civil litigation, but served in the legislatures of the States and the Congress of the United States; were mayors of our cities, and performed a host of legally related functions that put the legal profession at the forefront of "problem solving" in our communities, while providing leadership and stability, and protected the moral fiber of our communities; and, thus, the rule of law governed our lives, thereby, making America a Mecca of freedom.

Lawyers are especially equipped to govern, educate, and problem solve. We must develop those skills, unique to our profession, that allow for individuals to gain confidence and behavioral insight while influencing others by teaching and role-modeling. We have courtrooms in which we persuade the court and juries; classrooms in which we educate law students; and offices and social outings where we interact with persons of other disciplines - all utilized to promote the laws and order of our society. We, therefore, have no excuse for not becoming more involved in the life of our communities and our nation.

Then, what is society's expectation of lawyers in 1998 and beyond? How can we celebrate our freedom today and concurrently ensure justice in the future?

"Justice" demands the fulfillment of the promises of the Declaration of Independence and the Constitution. When the framers declared to the free world in 1776 that ... "All men are created equal and are endowed with certain inalienable rights, among them are life, liberty and the pursuit

of happiness," they unknowingly declared the basis for a new social, economic, and governmental perspective. Thus, our professional mandate, today, requires that our nation guarantee its citizens, having the least, the same protections afforded by the Constitution to those enjoying the most. We can agree then that justice is not ensured to the majority until the minority enjoys its full and unabridged protections. Although we have made great advances in our civil justice system, passing laws ensuring justice for racial and ethnic minorities, women, the handicapped, and mentally ill, we must now refine the execution of these laws in particular ways that ensure that "individuals" are impacted, rather than groups and segments of our society.

For example, I grew up in Southwest Louisiana in "segregated" America, longing to see the promises of equality, humanity, and freedom made visible and real. During that era, the color of a man's skin determined his worth to society - where he lived or could live; where he was educated, or whether he received a quality education at all; and, the economic opportunities available to him, if at all, beyond basic menial labor. Today, I cannot declare that the "purity of justice" fulfills my vision of Justice's aims. America has not lived out its creed. The freedoms enjoyed by the majority society are not fully realized by all, today. This is in part due to the inaction of lawyers - those we all though would be the architects of social reforms, the engineers of social magnanimity, and the guardians of due process and fundamental fairness.

Today we, the lawyers, must create a new legal and social order by elevating the "Cause of justice" to a higher plateau. Many of us have become "searchers of wealth" and "status," rather than the definers and protectors of liberties. We have become too comfortable with things as they are, rather than what they should be; and, with who we are, rather than the reasons we undertook to join this noble profession. Lawyers are the only professional group in America particularly

trained to alleviate many of America's problems.

I often remember in sadness, when as a child visiting the local library, I had to go to a window marked "Colored" to get a book. Upon entering the library, I was forbidden by law, to use the Dewey decimal system to locate the book pertinent to my needs; or, to even browse through the stacks and pick a book for leisure reading or assist me in completing my homework assignments.

I was bussed past a wonderful looking two story brick school building, across the railroad tracks to a rundown old building where I attended school. The building was excessively cold in the winter and scorching hot in the spring and summer. I am reminded of receiving old outdated books with the backs torn off, while the newly ordered books went across the tracks to the other school. I am also reminded of the common practice of getting the old band instruments after their serviceability had ended; and, as with the text books, the new musical instruments were given to the other school. I achingly recall having to walk home during those evenings the other school's football team utilized our school bus for their out-of-town games.

These were times dictated by the "separate but equal" doctrine promulgated in 1896 by the Supreme Court decision of Plessy v. Ferguson. For us, life was perpetually separate, but never equal. Following the 1952 Supreme Court decision in Brown v. Board of Education, the South slowly opened its doors to Blacks and other minorities. Segregation, however, prevailed in my hometown until 1969, when the schools were first integrated by court order. That very day, under the cover of darkness, a group of white citizens bulldozed our school building, fearing that the court would order their children to attend the ill equipped, shabbily constructed and maintained school in the heart of the Black community. Today, much has changed, but, there are no proms or

other social gatherings in my hometown schools; neither are there "mixed-race" social activities after school. School life is integrated only with respect to one's participation in school sports. Children who are reared with these experiences will become the adults who will maintain segregationist ideas; and, some of these women and men will become lawyers and judges. Truly, then there will once again arise a conservative-bent atmosphere that will re-divide America deeply along racial lines.

I truly want to relish in the freedoms granted by the Constitution, but, I am troubled that so many are excluded despite the promises America offers.

I became an attorney in 1972, and recall my misadventure in an East Texas courtroom, in 1973 as a newly commissioned Assistant Attorney General of the State of Texas, representing the Board of Medical Examiners in a pre- Roe v. Wade abortion case involving the suspension of a physician's medical license. Although I was thought, during those times, to be advocating from the posture of the "good guy," the judge turned his back to me when I rose to speak on behalf of the State of Texas. This gesture let the public (there were a significant number of people assembled in the small courtroom) know of his displeasure at having the State represented by a Black lawyer for he had previously served as an Assistant Attorney General, himself. In light of that Judge's overtly discourteous and unprofessional demeanor, I still wonder why my adversary did not speak out and decry this "inhumane spectacle." Did he not understand that such unprofessional behavior tarnished his professional standing as much as it humiliated me? I am convinced, that had the roles been reversed, I would have questioned whether our profession had trained lawyers well enough to act as the guardians of the rights of men and to root out injustice wherever they encountered it, if they could not even broach the issue in their own sanctuary, a court of law.

I am also left to ponder the larger issue of whether law schools are preparing new lawyers to be strict adherents to and advocates of the rule of law? Recently, a Black lawyer friend of mine was ridiculed by the Black bar in Houston for representing the Ku Klux Klan in federal court, after the group was denied a parade permit by a local governing authority. His point of view was that he detested all the Ku Klux Klan believed in and stood for, and as a constitutional litigator had fought against their ideas; but, the rule of law would have been violated if they were not allowed the parade pen-nit, and he was duty bound to see that the law was upheld for everyone, equally. He understands that representing unpopular causes, or even unpopular people, can keep the rule of law inviolate. This lawyer, therefore, discharged his duty to the Klan, as well as our profession, by providing his competent counsel, and for a "brief" period of time was dishonored by other Blacks. I emphasize "a brief period" because I, and a few others, rallied to his defense to point out that in the same way he could not be compelled to represent a client against his will, he could not be condemned for representing an unpopular client, particularly in an instance in which he saw the rule of law being disserved.

It takes this kind of intestinal fortitude to ensure that justice prevails in America. Even when the cost of freedoms outweighs one's personal gains; and, when other's recognition of you turns to disdain; and, their admiration to scorn; when your future as a lawyer is on the line - well, this is what being a "lawyer" is really all about. It is being unafraid of the social consequences; but, more fearful that if you fail to act, social injustices will prevail and become a type of normalcy, evading and eroding the rule of law.

What would you have done if faced with my lawyer friend's dilemma? Is the protection of the rule of law so embodied within your psyche and professional fiber that no forethought would

have been necessary, because your legal education and life before the bench and bar justly prepared you for the necessary sacrifices as well as the rewards of practicing law.

All is not lost. I have unyielding faith in the ability of my fellow lawyers today to prepare to rise and meet such an occasion. Immediately before assuming my post as a United States Magistrate Judge for the Southern District of Texas, I was fortunate to have served as a federal prosecutor. When the United States government caused an outstanding citizen in the Rio Grande Valley, along the United States - Mexico border, a senior United States Customs Service official of Mexican descent, to be indicted for "planting marihuana" on individuals crossing at the border check points, much pressure was brought to bear. There were allegations that this was a "racial" prosecution, and a "selective prosecution," not withstanding the investigative facts.

Encouragingly, a senior Mexican-American prosecutor defused the matter by discounting race and objectively weighing the facts. The jury agreed with the government's assessment and found the official guilty of civil rights violations. This is just an instance of a lawyer, and there are many, bypassing the easy tugs social will, but chose to support the rule of law.

We, as lawyers, share in the wealth of this nation. We are, therefore, blessed to be allowed to perform "special tasks" - to give counsel and legal advice and litigate the rights of our clients. Thus, in each instance we create an impression of our profession and must mirror the best of our society. Just by volunteering time, role modeling, and doing those things that create a "just" society, we can go a great distance in creating a more civil society consistent with America's Creed that "all men are viewed as equals and, thus, entitled to enjoy the freedoms of our society without the impediments of racial, ethnic or gender prejudice, economic stigma, and class disenfranchisement.

Our nation is a bountiful nation. Its strength is in the diversity of its citizens. As we pause to celebrate Law Day 1998, please accept that we are a blessed people, but we as lawyers and other professionals have a greater role to play in the future - that is, to continue to ensure the provision of justice to all people. By remembering from whence we came - how emigrants came to America in search of religious, economic, and self-governing freedoms - we may recommit ourselves to making the rule of law a reality in the lives of every citizen. Although my ancestors arrived on these shores in slave vessels and endured two hundred years of a cruel and insane bondage, I must remind those younger than myself, that when memories fade, the events of history can once again be replayed to fashion an unfortunate reality.

If we, the lawyers, fail in this pursuit of ensuring justice, and America's freedoms to all, become lost to increased violence, racial, ethnic, and gender denigration, then we will have assisted in the erosion of the role, scope, and mission of the law in our society.

We are blessed to enjoy this Law Day. Let us each recommit to making next year's program greater by fulfilling our mission to God, our profession, and to humanity.

Thank you for inviting me here to join your celebration.

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